

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 451**

**Introduced by Senator Schiff**

February 17, 1999

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An act to amend Section 6129 of, *and to add Section 6129.5 to*, the Penal Code, relating to criminal conduct of public employees, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as amended, Schiff. Criminal conduct by public employees: investigations.

Existing law requires the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms refer matters involving criminal conduct to the proper law enforcement authorities, and that the entity making a referral to the local district attorney also notify the Attorney General. Existing law further provides that if the local district attorney refuses to accept the case, or has not acted on the matter, as specified, the matter shall be referred to the Attorney General, as specified.

~~This bill would, instead, provide that the office of Inspector General and the corrections related entities described above refer matters involving criminal conduct to the Attorney General. The bill would provide that nothing in its provisions precludes the district attorney or sheriff from investigating or prosecuting matters not being investigated or prosecuted by~~

~~the Attorney General. The bill would also provide that upon the occurrence or discovery of a major incident, as defined, the on-scene supervisors shall notify the Office of Internal Affairs, and that office in turn shall immediately notify the Attorney General.~~

*This bill would, instead, provide that upon the occurrence or discovery of a major incident, as defined, the Department of Corrections supervisor is required to notify the department's Office of Internal Affairs, and that office in turn is required to immediately notify the Attorney General. The bill also provides that the Attorney General has discretion to accept a criminal case involving a department employee, and that if the Attorney General elects not to investigate and prosecute the case, the local district attorney would investigate and, if appropriate, prosecute the case. By increasing local prosecution costs, the bill would impose a state-mandated local program.*

*This bill declares that nothing in the provisions precludes the local District Attorney or other law enforcement entity from investigating or prosecuting matters not being investigated or prosecuted by the Attorney General. The bill also reorganizes without substantive change, certain provisions of existing law.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*This bill would declare that its provisions would become effective immediately as an urgency statute.*

*Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.*

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6129 of the Penal Code is  
2 amended to read:  
3 6129. (a) Any state employee at any rank and file,  
4 supervisory, or managerial level who intentionally

1 engages in acts of reprisal, retaliation, threats, coercion,  
2 or similar acts against an employee of either department  
3 for having disclosed what the employee, in good faith,  
4 believed to be improper activities shall be disciplined by  
5 adverse action as provided in Section 19572 of the  
6 Government Code. If no adverse action is instituted by  
7 the appointing power, the State Personnel Board shall  
8 invoke adverse action as provided in Section 19583.5 of  
9 the Government Code.

10 (b) In addition to all other penalties provided by law,  
11 any state employee at any rank and file, supervisory, or  
12 managerial level who intentionally engages in acts of  
13 reprisal, retaliation, threats, coercion, or similar acts  
14 against an employee of either department for having  
15 disclosed what the employee, in good faith, believed to be  
16 improper activities shall be liable in an action for damages  
17 brought against him or her by the injured party. Punitive  
18 damages may be awarded by the court if the acts of the  
19 offending party are proven to be malicious. If ~~reliability~~  
20 *liability* has been established, the injured party also shall  
21 be entitled to reasonable attorney's fees as provided by  
22 law.

23 ~~(e) (1) The Inspector General, the Youth and Adult~~  
24 ~~Correctional Agency, the Department of the Youth~~  
25 ~~Authority, the Department of Corrections, the Board of~~  
26 ~~Corrections, the Youthful Offender Parole Board, and the~~  
27 ~~Board of Prison Terms shall refer matters involving~~  
28 ~~criminal conduct to the Attorney General. It is the intent~~  
29 ~~of the Legislature that the Department of Justice avoid~~  
30 ~~any conflict of interest in representing the State of~~  
31 ~~California in any civil litigation that may arise in a case in~~  
32 ~~which an investigation has been or is currently being~~  
33 ~~conducted by the Bureau of Investigation by contracting~~  
34 ~~when necessary for private counsel. Nothing in this~~  
35 ~~section is intended to preclude the district attorney or~~  
36 ~~sheriff from investigating or prosecuting matters~~  
37 ~~involving the Department of Corrections staff that are~~  
38 ~~not being investigated or prosecuted by the Attorney~~  
39 ~~General.~~

~~(2) Upon the occurrence or discovery of a major incident, the on scene supervisors shall immediately notify the Office of Internal Affairs. Upon that notification, the Office of Internal Affairs shall immediately notify the Attorney General.~~

~~(3) As used in this section, “major incident” includes, but is not limited to, any use of deadly force, any use of force resulting in death or serious injury, any suicide or attempted suicide, any unattended death, or any allegation of sexual assault.~~

*SEC. 2. Section 6129.5 is added to the Penal Code, to read:*

*6129.5. (a) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving criminal conduct to the proper law enforcement authorities.*

*(b) Upon the occurrence or discovery of a major incident within a Department of Corrections facility, the supervisor who is present at the scene shall immediately notify the department’s Office of Internal Affairs. Upon that notification, the Office of Internal Affairs shall immediately notify the Attorney General who may initiate an investigation by the Department of Justice. As used in this section, major incidents include, but are not limited to, any of the following:*

*(1) Use of deadly force.*

*(2) Use of force resulting in death or serious injury.*

*(3) Suicide or attempted suicide.*

*(4) Unattended death.*

*(5) Allegation of sexual assault.*

*(c) Upon inception of any criminal investigation involving an employee of the Department of Corrections or an agent thereof as a suspect, a representative from the department shall immediately notify the Attorney General. The notice shall be given regardless of whether a local district attorney has also been notified of the investigation. The Attorney General shall have the*

1 discretion to elect whether to assume responsibility for  
2 the investigation and prosecution of criminal cases  
3 involving employees or agents of the department. If the  
4 Attorney General elects not to assume responsibility for  
5 investigation and prosecution of a case involving a  
6 department employee or agent, the local district attorney  
7 shall be responsible for investigation and, when  
8 appropriate, prosecution of the case. Nothing in this  
9 section shall preclude a local district attorney or other law  
10 enforcement agency from investigating or prosecuting  
11 any matter involving an employee or agent of the  
12 department when the matter is not being investigated or  
13 prosecuted by the Attorney General.

14 (d) It is the intent of the Legislature that the  
15 Department of Justice avoid any conflict of interest in  
16 representing the State of California in any civil litigation  
17 that may arise in a case in which an investigation has been  
18 or is currently being conducted by the department's  
19 Bureau of Investigation by contracting when necessary  
20 for private counsel.

21 SEC. 3. No reimbursement is required by this act  
22 pursuant to Section 6 of Article XIII B of the California  
23 Constitution because the only costs that may be incurred  
24 by a local agency or school district will be incurred  
25 because this act creates a new crime or infraction,  
26 eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section  
28 17556 of the Government Code, or changes the definition  
29 of a crime within the meaning of Section 6 of Article  
30 XIII B of the California Constitution.

31 SEC. 4. This act is an urgency statute necessary for the  
32 immediate preservation of the public peace, health, or  
33 safety within the meaning of Article IV of the  
34 Constitution and shall go into immediate effect. The facts  
35 constituting the necessity are:

36 In order for the Department of Justice to immediately  
37 investigate major incidents within correctional facilities,  
38 it is necessary that this act take effect immediately.

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